



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,508	02/20/2001	Clemens Schmick	31512-168975	5369

26694 7590 05/06/2003

VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP
P.O. BOX 34385
WASHINGTON, DC 20043-9998

EXAMINER

LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
----------	--------------

1731

DATE MAILED: 05/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,508

Applicant(s)

SCHMICK ET AL.

Examiner

Carlos Lopez

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/19/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5,7,9,10,12 and 14-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-25 is/are allowed.
- 6) ☒ Claim(s) 2-5,7,9,10,12 and 14-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 1) Claims 2-3, 9, 10, 12, 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Garthaffner et al (US 4,817,638) in view of Crowder (Electric Drives and Their Controls). Garthaffner discloses a channel for moving smoking material 12. The channel being formed from elongated walls having endless flexible belt 23 and recessed conveyors 21. As shown in figure 1 the recessed conveyor 21 forming the channel, move in a lengthwise direction. Garthaffner is silent disclosing the type of drive for moving the recessed conveyor 21 or the endless flexible belt 23. However, in pages 188-189, Crowder teaches "In drive systems, there have been an almost complete shift towards the use of digital rather than analog systems; this results in systems with a number of significant benefits." Among the benefits of using a digital drive is " the use of low-cost microprocessors", "digital control provides a highly flexible system", and "due to digital nature of the controller there will be no component variation". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have chosen a digital (digital servo) as the means for moving the walls forming the channel of Garthaffner because it provides a low cost, a highly flexible system, and there is no component variation as taught by Crowder.

Art Unit: 1731

As for claim 20, conveyor 13 provides smoking material to the channel formed from belt 23 and recessed conveyor 22 (Figure 1). As for claim 12, the recessed conveyor 21 is coated with a current conducting material (Column 3, lines 29ff). As for claim 19, the recess of conveyor 21 are equidistant from each other (Figure 1). As for claim 21, as shown in figure 1 the width orientation is narrower than the length orientation.

2) Claims 2-5, 9, 16-18, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korber (GB 919,150) in view of Crowder (Electric Drives and Their Controls). Korber discloses a mechanism for handling tobacco stream wherein the sides or the bottom of a U shaped duct moves at the same speed as the stream of tobacco (Lines 40-47). Korber is silent disclosing the means for moving the sides of the U shaped duct. However, in pages 188-189, Crowder teaches "In drive systems, there have been an almost complete shift towards the use of digital rather than analog systems; this results in systems with a number of significant benefits." Among the benefits of using a digital drive is "the use of low-cost microprocessors", "digital control provides a highly flexible system", and "due to digital nature of the controller there will be no component variation". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have chosen a digital (digital servo) as the means for moving the walls forming the U shape duct of Korber because it provides a low cost, a highly flexible system, and there is no component variation as taught by Crowder.

As for claim 3, Korber in claim 10 provides for one or more conveyors belts, which are inherently endless. As for claims 4-5, Korber discloses spikes 33 which would provide

recesses. As for claim 17, Korber claim 10 provides for perforations at the base and side wall of the channel. As for claim 18, elements 2 and 31 of Korber provide housing for the walls of the conveyor belts. As for claim 20, Korber discloses that tobacco particles are supplied directly onto the conveyor means (Lines 8-19). Additionally as shown in figure 1 the width orientation is narrower than the length orientation.

3) Claims 2-3, 9, 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dombek (US 6,390,099) in view of Crowder (Electric Drives and Their Controls). Dombek discloses a channel for moving smoking material 4. The channel being formed from elongated walls having endless flexible belts 18 and 20 and recessed conveyors 12 and 24 serving as means for moving the elongated walls 18 and 20. However, in pages 188-189, Crowder teaches "In drive systems, there have been an almost complete shift towards the use of digital rather than analog systems; this results in systems with a number of significant benefits." Among the benefits of using a digital drive are "the use of low-cost microprocessors", "digital control provides a highly flexible system", and "due to digital nature of the controller there will be no component variation". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have chosen a digital (digital servo) as the means for moving the elongated walls of Dombek because it provides a low cost, a highly flexible system, and there is no component variation as taught by Crowder. As for claims 9 and 21, the belt 18 and 20 forming the channel move in a lengthwise direction. Additionally as shown in figure 1 the width orientation is narrower than the length orientation.

Art Unit: 1731

4) Claims 14 and 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garthaffner et al (US 4,817,638) in view of Crowder (Electric Drives and Their Controls). Garthaffner is silent disclosing the material forming the endless belt. However, Examiner takes Official Notice that belts are conventionally formed from polyurethane elastomers. It would have been obvious at the time the invention was made to one of ordinary skill in the art to have used a belt made from conventional materials since Examiner takes official notice that belts are made of polyurethane elastomers. Applicant is referred to US 3,592,334 where evidence supporting Examiner's Official Notice is disclosed.

As for claim 15, figure 1 shows a stream of cigarettes, which is convertible into rod-like fillers of smoker's product, each have a predetermined length and the material receiving recess (22) are spaced apart from each other lengthwise of said at least one wall. It is considered that the recesses are spaced apart from each other by a multiple of the length of the cigarette. Any multiple of the length of the cigarette may be used to space apart the recess without affecting the transporting of the cigarettes.

Allowable Subject Matter

Claims 23, 7, 24 and 25 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: The cited prior art does not disclose or reasonably suggest having a pulley rotatable about a predetermined axis and including a cage having bars parallel with said axis and mating the teeth of the conveying belt as recited in claims 23 and 7. Similarly, the cited prior art does not disclose or reasonably suggest a channel having two

Art Unit: 1731

movable recessed stream contacting surface as recited in claim 24. Nor the prior art disclose having the conveying path width decrease in the direction of the lengthwise movement of the conveyor as recited in claim 25.

Response to Arguments

Applicant's arguments filed 2/19/03 have been fully considered but they are not persuasive. In response to applicant's argument that the cited prior art fails to disclose a digital servo means for moving said walls it is pointed out that there are two types of drives known. A digital drive or analog drives are the only types available in the art. One of ordinary skill in the art may either have chosen an analog or digital drive to serve its desired function. In fact one of ordinary skill in the art would be motivated to use a digital servo drive because it can easily be adjusted and is self-tuning as taught by Drive Technologies. Additionally Applicant argues that the Garthaffner fails to teach the limitations of claim 15. As noted above it is considered that a multiple of the length of the cigarette may be the distance separating each recess. Furthermore a correlation that a multiple of the length of Grathffner's cigarette is the distance separating the recess has not been shown to have unexpected results. The distance by which the recesses are separated dependent on a multiple of the length of the cigarette being transported appears to be a design choice that does not provide any new significant function.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1731

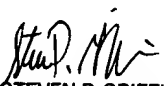
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is (703) 605-1174. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700